



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: DHD, Inc.--Request for Reconsideration;
Claim for Protest Costs

File: B-237048.3

Date: February 27, 1990

Michael E. Snyder, Esq., D'Agostino & Associates, P.C., for the protester.
Edward J. Korte, Esq., Department of the Army, for the agency.
Stephen J. Gary, Esq. and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Dismissal of protest that proposal was improperly evaluated is affirmed; agency determined that evaluation factors were defective, terminated awardee's contract, and stated its intention to recompile the requirement on the basis of revised evaluation criteria, thus rendering the protest academic.

2. Where a protest is dismissed as academic, there is no decision on the merits and therefore no basis for recovery of protest costs.

DECISION

DHD, Inc., requests reconsideration of our dismissal of its protest of an award to Access Research Corporation (ARC), under request for proposals (RFP) No. DAAJ09-88-R-0381, issued by the Department of the Army for the preparation of technical data packages. DHD also seeks reimbursement of certain costs of pursuing its protest, namely, its attorneys' fees.

We deny the request for reconsideration and the claim for costs.

DHD protested that the Army erred in finding it technically unacceptable. We dismissed DHD's protest as academic when the Army reported that, after determining that the RFP's

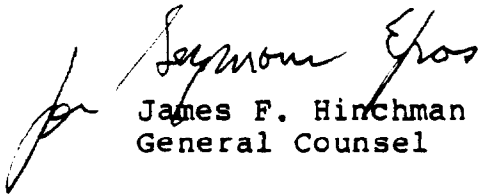
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evaluation factors were defective, it had terminated the contract with ARC. The Army also stated that it would recompute the requirement on the basis of revised criteria that reflected its actual needs. The protester does not question the agency's determination that the evaluation factors were defective, but asserts that, rather than dismiss its protest, we should have recommended award to DHD. According to DHD, since the Army failed to grant it the relief requested (namely, award of the contract), its protest was not rendered academic by the termination of ARC's contract.

Notwithstanding that DHD requested different relief, the corrective action taken by the agency was appropriate; the need to revise the solicitation to be consistent with the agency's needs is a legitimate basis for cancellation. See Norfolk Shipbuilding and Drydock Corp., B-219988.3, Dec. 16, 1985, 85-2 CPD ¶ 667. In light of the RFP's admitted deficiencies, award under the original RFP would have been improper. Under these circumstances, no useful purpose would have been served by further consideration of the protest, and it therefore properly was dismissed as academic. Id.

We also find no basis for DHD's claim for protest costs (attorneys' fees). We have consistently held that a protester is not entitled to reimbursement of its costs where the protest is dismissed as academic and we therefore do not issue a decision on the merits. See Maytag Aircraft Corp.--Recon.; Claim for Protest Costs, B-237068.2, Nov. 13, 1989, 89-2 CPD ¶ 457.

The request for reconsideration and the claim are denied.


James F. Hinchman
General Counsel